

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1508/Del/2018 : Asstt. Year : 2014-15

Jyotsna Sharma, A-165, Preet Vihar, New Delhi-110098	Vs	ACIT, Circle-59(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAYPS1805K		

Assessee by : Sh. Salil Aggarwal, Adv.

Revenue by : Sh. Bhopal Singh, Sr. DR

Date of Hearing: 15.03.2021

Date of Pronouncement: 19.03.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-37, New Delhi dated 30.01.2018.

2. Following grounds have been raised by the assessee:

"1. That the Ld. CIT(A) has wrongly directed to add a sum of Rs. 35,69,177.00 to the Income of the assessee, which the Ld. Assessing Officer has already allowed in her assessment order.

2. The Ld. CIT(A) is not justified in disallowing expenditure u/s 37(1) on account of bank interest amounting to Rs. 35,69,177.00 debited to the profit & loss account.

3. That the Ld. CIT(A) has wrongly directed to add a sum of Rs. 35,69,177.00 on account of interest paid on Overdraft Facility without affording

reasonable opportunity to the appellant to explain the same.

4. That the Ld. CIT(A) has wrongly invoked the provisions of Section 251 of the Income-tax Act, 1961 without giving any show cause and reasonable opportunity of being heard to the appellant."

3. Facts relevant to the case are that the assessee has given interest free loans to the parties as under:

Party	Opening as on 01/04/2013	Amount Given during the year	Closing as on 31/03/2014
Arvind Gulati	128,000.00	-	128,000.00
BN Finlease Pvt. Ltd.	861,414.00	25,208,918.00	26,070,332.00
B.N. Estate Pvt. Ltd.	-	11,112,851.00	11,112,851.00
Durga Global Pvt. Ltd.	-	22,590.00	22,590.00
	989,414.00	36,344,359.00	37,333,773.00

4. The AO held that by advancing interest free loans to sister concerns, the assessee was channelizing interest bearing funds for non-business purposes.

5. The Id. CIT(A) confirmed the action of the Assessing Officer.

6. Before us, the Id. AR argued that the assessee has got sufficient own funds to lent the amounts to sister concerns and it was not the loan funds which have been given to sister concerns interest free.

7. We have perused the balance sheet of the assessee for the year ending 31.03.2014.

Schedules Annexed to a forming part of Balance Sheet and Profit and Loss account for the year ended 31 st March 2014	
Schedule-A Proprietor Capital Account	
Opening Balance	7,673,487.64
Add: Profit for the year	41,121,856.57
Add: Additions during the year	2,843,771.00
	51,639,115.21
Less: Drawing	7,459,498.71
Total	44,179,616.50

Schedule-B Fixed Assets (at written down value)	102,448,808.61
	102,448,808.61

8. From the above, we find that the proprietor's capital account is on account of profit for the year and addition during the year both of which have been determined after closing of the books at the end of the financial year. Hence, it cannot be said that the assessee has got sufficient interest free funds available with her to advance interest free loans. However, at the same time, the action of the Assessing Officer to consider interest for a period of 12 months also cannot be accepted. Hence, in the interest of justice, we remand the matter back to the file of the AO to go through the quarterly and half year unaudited accounts and to determine the availability of the funds at the given point of time of lending of loan and the restrict the disallowance to the earlier months only and on the percentage of the interest paid to the banks.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 19/03/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 19/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR